

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**1:11cv35**

<b>SYNOVUS BANK,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b><u>ORDER</u></b>
	)	
<b>CHARLES KIMMEL, JEREMY</b>	)	
<b>KIMMEL, JAY LURIE and</b>	)	
<b>ELIZABETH POST,</b>	)	
	)	
<b>Defendants</b>	)	
	)	

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Pending before the Court is Defendants' Motion to Amend Amended Answer to Complaint [# 27]. Defendants seek leave of Court to amend their Amended Answer in order to add factual allegations and withdraw the cause of action for aiding and abetting. Plaintiff does not oppose the proposed amendment. The Court **GRANTS** Defendants' Motion to Amend Amended Answer to Complaint [# 27].

**I. Analysis**

Federal Rule of Civil Procedure 15(a) provides that a party may amend its pleading after the expiration of the time periods specified in Rule 15(a)(1) "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Rule 15(a)(2) further provides that leave to amend shall be freely given

"when justice so requires." Id. Absent a showing of undue delay, bad faith, futility, or prejudice to the opposing party, a court should grant a party leave to amend. Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227 (1962); Equal Rights Center v. Niles Bolton Assocs., 602 F.3d 597. The proposed amendment to Defendants' Second Answer would not result in undue delay or prejudice to Plaintiff, and the amendment is not futile or made in bad faith. Accordingly, the Court **GRANTS** Defendants' Motion to Amend Amended Answer to Complaint [# 27].

## **II. Conclusion**

The Court **GRANTS** Defendants' Motion to Amend Amended Answer to Complaint [# 27]. Defendants shall file their Amended Answer by December 7, 2011. The Court **DENIES as moot** the Motion to Dismiss Defendants' Counterclaims and Third-Party Claims [# 11]. Plaintiff shall have twenty (20) days from the filing of the Second Amended Answer to answer or otherwise respond to any counterclaims or third-party claims.

Signed: November 22, 2011

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge



